* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : May 03, 2007
Date of Decision : May 16, 2007

\+ W.P. (C) 2212/2006

PARIVAR SEVA SANSTHA ..... PETITIONER
Through : Mr. Valmiki Mehta, Senior Advocate with Mr. Sanjeev Sindhwani, Advocate

versus

M.C.D. & ANR. .... RESPONDENT
Through: Ms. Geeta Mehrotra, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The petitioner society is registered under the Societies Registration Act, 1860, as well as Section 12A(a) of the Income Tax Act, 1961. It challenges an order dated 23.3.2005 passed by the Joint Assessor and Collector, Municipal Corporation of Delhi (MCD) informing it of the rejection of the petitioner's application for exemption, under Section 115 (4) of the Delhi Municipal Corporation Act, 1957 ('DMC Act') from payment of property tax in respect of its property at C-374, Defence Colony, New Delhi (hereafter 'the said premises').

2. It is stated in the petition that the petitioner society is a non-profit organization working in the field of family planning, family welfare and reproductive health care services in India since 1978. Its clinics are recognized by the Government of India and it also works in close association with both the Central and State Governments in

implementing various programmes for improving and increasing awareness of health care in the country. The petitioner's administrative office is located at C-374, Defence Colony, New Delhi. It carries out all of its activities from the said premises.

3. On 4.9.2002 the petitioner applied to the MCD for exemption from payment of property tax in terms of Section 115 (4) of the DMC Act. Without disposing of this application, the respondent MCD raised a demand for an amount of Rs.56,90,450/- towards property tax dues in respect of the said premises by a bill dated 16.8.2002. The petitioner sent its objections to the said bill but the MCD did not consider them. Instead the MCD sent a demand notice dated 27.11.2002 calling upon the petitioner to deposit property tax within 30 days. At this stage, the petitioner made a representation dated 9.12.2002 claiming exemption from payment of property tax under Section 115 (4) of the DMC Act.

4. The petitioner filed a Writ Petition being W.P.(C) No 318 of 2003 in this Court which was disposed of by an order dated 13.1.2003 directing that the application made by the petitioner under Section 115 of the DMC Act will be decided after hearing the petitioner on 20.2.2003. It was further directed that the Assessing Officer would pass a speaking order within a period of two months from that date. Till then, the demand notice dated 27.11.2002 and the bill dated 16.8.2002 were directed not to be given effect to.

5. The petitioner was given a hearing as directed. By a communication dated 25.2.2003, the respondent informed the petitioner that the application for exemption under Section 115 of the DMC Act was rejected on the ground that there was a very minor

contribution to the petitioner's total receipts in the form of donations and that “your organization is in no way dependent on voluntary contributions.”

6. The petitioner filed a further writ petition being W.P.(C) No. 1704 of 2003 in this Court the challenging rejection of its application by the order dated 25.2.2003. By a judgment dated 2.11.2004 this Court set aside the said impugned order dated 25.2.2003 and remanded the matter to Assessing Officer MCD after holding that the amount received by the petitioner by way of grants from institutional donors or foreign donors had to be treated as voluntary contributions and if so treated nearly 50% of the income every year would by way of voluntary contributions. This Court further held that merely because there was excess income after clubbing the grants and donations and the income generated by the Society from its activities and subtracting the expenditure therefrom, would not mean that the petitioner was disentitled to the benefit under Section 115 (4) of the Act. This Court directed that the petitioner would appear before the Joint Assessor and Collector, MCD on 22.11.2004 for a fresh hearing and that reassessment would be carried out within four weeks from that date. The Court noted that during the pendency of the said writ petition, the petitioner had deposited Rs.55 lakhs pursuant to the orders of the Court. This Court directed that if the petitioner was held to be entitled to the benefit of exemption under Section 115(4) of the DMC Act the amount so deposited would be refunded simultaneously with the passing of the order in favour of the petitioner.

7. After the second remand order, the Assessor and Collector passed the impugned order dated 23.3.2005 in which after

scrutinizing the income and expenditure of the petitioner, it was held that:-

> "After adding the amount of grant received by Sanstha for specific projects and donations from Institutional and foreign donors, total percentage of donations/voluntary contributions does not cross 50% of income, whereas year wise amount of expenditure can be meet out from by operational income except one year 2002-3 in which expenditure amount is Rs.20,61,67,070/- whereas operational income is Rs.12,14,85,156/-. As per income and expenditure chart, expenditure is meet out by operational income and as per site enquiry not a single case is given free treatment to poor."

8. The petitioner on 1.4.2005 and 30.8.2005 made detailed representations to the respondent seeking reconsideration of the decision dated 23.3.2005 since it was not based on the correct figures. The petitioner was then asked to attend a further hearing. Thereafter, after accounting for the corrected figures, the Assessor and Collector, MCD issued a letter dated 15.2.2006 reiterating that the total percentage of donations did not cross 50% of the income. The letter said: "Whereas year wise amount of expenditure can be met out from by operational income except one year 2002-03 in which expenditure amount is Rs.20,81,84,981/- whereas operational income is Rs.12,14,85,156/-" It was further concluded that: "As per income and expenditure chart, expenditure is met out by operational income and as per site enquiry not a single case is given free treatment to poor."

9. Mr. Valmiki Mehta, learned Senior counsel appearing for the petitioner submits that despite numerous hearings and the petitioner furnishing the full particulars, the respondent MCD continues to

commit errors which is apparent on the reading of the impugned order itself. Ms. Geeta Mehrotra, learned counsel for the MCD sought to justify the order dated 23.3.2005 and the subsequent letter dated 15.2.2006 on the ground that the total of the grants and donations did not exceed 50% of the operational income and further that as per the site enquiry not a single case is given free treatment.

10. Section 115 (4) of the Act reads as under:-

> "115 – Premises in which property taxes are to be levied.
> (4) Save and otherwise provide in this Act, the General Tax shall be levied in respect of all lands and buildings in Delhi except
> (a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by society or body for charitable purposes provided:
> that such society is supported wholly or in part by voluntary contribution, applies its profit, if any, or other income in promoting its objections and does not pay any dividend or bonus to its members."

11. The judgment dated 2.11.2004 of this Court in WP(C) 1704/2003 considered the judgment of the Hon'ble Supreme Court in ***MCD vs. Children's Book Trust,*** (1992) 3 SCC 390 where the test to be applied was explained thus: "whether the assessee generates income from its own activities to sustain itself or not." It was held that unless the assessee was supported wholly or in part by voluntary contributions, it would not be entitled to exemption. This Court found that there was internal evidence to show that the petitioner had received voluntary contributions that constituted nearly 50% of its income. This Court, after examining the figures pertaining to the petitioner, set aside the rejection order on this ground and remanded

the case to the MCD for a fresh decision.

12. What was, therefore, required after this remand to it by this Court was for the MCD to determine if the society was able to meet its expenditure entirely from its income. The impugned order dated 23.3.2005 draws three conclusions. First, it states that after adding amount of grants and donations, the total percentage of donations/voluntary contributions does not cross 50% of the income. As regards this statement, it is perhaps correct that the grants and donations did not cross 50%, it can be seen that for the years 1997-98 and 2002-03, it was around 45%. However, that can hardly decide whether the petitioner was able to support itself from the income generated from its own activities. In order that the test for declining the exemption under Section 115(4) is correctly applied, it will have to be sham by the MCD that the petitioner was able to meet its expenditure entirely from its operational income. Here, the impugned order dated 22.3.2005, which has been reiterated in the subsequent letter dated 15.2.2006, states that except for the year 2002-03 the amount of year-wise expenditure could be met from the operational income. This conclusion is some what perplexing considering the figures of expenditure and operational income set out in the letter dated 15.2.2006 by the Assessor and Collector herself.

These three columns read as under:-

Income & Expenditure Statement of Parivar Seva Sanstha

Year	***Expenditure (Rs.)***	***Operational Income (Rs.)***
1997-98	8,74,75,062	6,58,10,921
1998-99	11,16,91,889	8,11,05,182
1999-00	12,31,38,709	8,17,28,387

2000-01	13,72,83,464	10,54,24,564
2001-02	16,45,72,508	10,38,51,381
2002-03	20,81,84,981	12,14,85,156
2003-04	14,22,91,480	12,74,10,500

The above figures of expenditure excludes depreciation and is, therefore, explained as 'operational expenditure'.

14. On a comparison of the total expenditure figures or even the operational expenditure (total expenditure minus depreciation) it is clear that the operational income is less than the operational expenditure for each of the years 1997-98 to 2003-04. Therefore, the conclusion that year wise amount of expenditure can be met out from the operational income is completely unsupported even by the figures set out in the orders dated 22.3.2005 and 15.2.2006. Nowhere, does the respondent explain how such a conclusion has been arrived at from the figures set out by it.

15. As regards the third conclusion that not a single case of free treatment was noticed on site visit, the petitioner has categorically stated it is writ petition that there was in fact, no site visit by the officials of MCD. It has been further averred by the petitioner that “it does over 20000 free annual sterilizations, besides free distribution of condoms, pills and other birth control methods, besides other free activities, in furtherance of its objects.” Despite several opportunities, the MCD has not file any counter affidavit to deny these averments.

16. The only conclusion, therefore, that is possible in the circumstances is that the impugned order dated 23.3.2005 and the subsequent letter dated 15.2.2006 are unsustainable in law and are

hereby quashed. Given the fact that the matter has been remanded several times to the MCD, no useful purpose will be served in again remanding the matter to it. A direction is issued to the MCD to now issue an order granting exemption to the petitioner under Section 115(4) of the Act with effect from the assessment year for which the petitioner first made its application. The property tax will accordingly be reworked and the excess amount of tax collected will be refunded to the petitioner in accordance with law within a period of eight weeks from today.

17. With the above directions, the writ petition is allowed with costs of Rs.5,000/- which will be paid by the MCD to the petitioner within four weeks from today. The writ petition and the application stand disposed of.

S. MURALIDHAR, J.

May 16, 2007
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